



Armed Forces Act 2006

2006 CHAPTER 52

PART 8

SENTENCING POWERS AND MANDATORY ETC SENTENCES

CHAPTER 6

MANDATORY ETC CUSTODIAL SENTENCES FOR CERTAIN OFFENCES

[^{F1}Required or discretionary sentences for particular offences]

228 Appeals where previous convictions set aside

[^{F1}(1A) Subsection (3) applies in the cases described in subsections (1B) to (2).

(1B) The first case is where—

- (a) a sentence has been imposed on any person under [^{F2}section 273(3) or 283(3) of the Sentencing Code (life sentence for second listed offence) as applied by section 218A of this Act];
- (b) a previous conviction of that person has been subsequently set aside on appeal; and
- (c) without that conviction, the previous offence condition mentioned in section 218A(1)(d) would not have been met.

(1C) The second case is where—

- (a) a sentence has been imposed on any person under section 225(3) of the 2003 Act (as applied by section 219(2) of this Act);
- (b) the condition in section 225(3A) of the 2003 Act was met but the condition in section 225(3B) of that Act was not; and
- (c) any previous conviction of the person without which the condition in section 225(3A) would not have been met is subsequently set aside on appeal.

(1D) The third case is where—

Status: Point in time view as at 01/12/2020.

Changes to legislation: Armed Forces Act 2006, Section 228 is up to date with all changes known to be in force on or before 21 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (a) a sentence has been imposed on any person under [^{F3}section 266 or 279 of the Sentencing Code (extended sentence for certain violent, sexual or terrorism offenders aged 18 or over) as applied by section 219A of this Act];
 - (b) the condition in section 219A(2) was met, but the condition in section 219A(3) was not; and
 - (c) any previous conviction of the person without which the condition in section 219A(2) would not have been met is subsequently set aside on appeal.
- (1E) The fourth case is where—
- (a) a sentence has been imposed on any person under section 227(2) of the 2003 Act (as applied by section 220(2) of this Act);
 - (b) the condition in section 227(2A) of the 2003 Act was met but the condition in section 227(2B) of that Act was not; and
 - (c) any previous conviction of the person without which the condition in section 227(2A) would not have been met is subsequently set aside on appeal.]
- (2) [^{F4}The fifth case is] where—
- (a) a sentence has been imposed on any person by virtue of section 225 or 226 [^{F5}of this Act]; and
 - (b) any previous conviction of his without which that section would not have applied has subsequently been set aside on appeal.
- (3) Where this subsection applies, an application for leave to appeal against the sentence may be lodged at any time within 29 days beginning with the day on which the previous conviction was set aside.
- [^{F6}(3A) Subsection (3B) applies where—
- (a) a sentence has been imposed on a person under [^{F7}section 273(3) or 283(3) of the Sentencing Code (life sentence for second listed offence) as applied by section 218A of this Act];
 - (b) a previous sentence imposed on that person has been subsequently modified on appeal; and
 - (c) taking account of that modification, the previous offence condition mentioned in section 218A(1)(d) would not have been met.
- (3B) An application for leave to appeal against the sentence mentioned in subsection (3A)
- (a) may be lodged at any time within 29 days beginning with the day on which the previous sentence was modified.]
- (4) [^{F8}Subsections (3) and (3B) have] effect notwithstanding anything in section 9(1) of the Court Martial Appeals Act 1968 (c. 20).

Textual Amendments

- F1** S. 228(1A)-(1E) substituted for s. 228(1) (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 22 para. 30\(2\)](#); S.I. 2012/2906, art. 2(t)
- F2** Words in s. 228(1B)(a) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 50\(2\)](#) (with s. 416(7), [Sch. 27](#)); S.I. 2020/1236, reg. 2
- F3** Words in s. 228(1D)(a) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 50\(3\)](#) (with s. 416(7), [Sch. 27](#)); S.I. 2020/1236, reg. 2
- F4** Words in s. 228(2) substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 22 para. 30\(3\)\(a\)](#); S.I. 2012/2906, art. 2(t)

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- F5** Words in s. 228(2)(a) inserted (3.12.2012) by Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), s. 151(1), **Sch. 22 para. 30(3)(b)**; S.I. 2012/2906, art. 2(t)
- F6** S. 228(3A)(3B) inserted (3.12.2012) by Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), s. 151(1), **Sch. 22 para. 30(4)**; S.I. 2012/2906, art. 2(t)
- F7** Words in s. 228(3A)(a) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 25 para. 50(4)** (with s. 416(7), Sch. 27); S.I. 2020/1236, reg. 2
- F8** Words in s. 228(4) substituted (3.12.2012) by Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), s. 151(1), **Sch. 22 para. 30(5)**; S.I. 2012/2906, art. 2(t)

Commencement Information

- I1** S. 228 in force at 28.3.2009 for specified purposes by S.I. 2009/812, **art. 3(a)(b)** (with transitional provisions in S.I. 2009/1059)
- I2** S. 228 in force at 31.10.2009 in so far as not already in force by S.I. 2009/1167, **art. 4**

Status:

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